

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

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Report

TO: Members of the Judicial Council

FROM: Probate and Mental Health Advisory Committee
Hon. Stephen D. Cunnison, Chair
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DATE: August 18, 2003

SUBJECT: Probate form: *Consent of Guardian, Nomination, and Waiver of Notice*
(revise form GC-211) (Action Required)

Issue Statement

Form GC-211, *Consent of Guardian, Nomination, and Waiver of Notice*, is used to provide evidence of three common events in a probate guardianship: (1) a proposed guardian's consent to serve as guardian, (2) a proposed guardian's nomination by a parent of the proposed ward or by the donor of a gift to the proposed ward, and (3) consent to the appointment of a guardian for a minor and waiver of notice of the hearing on the petition for the guardian's appointment.

The form should be revised to provide greater actual notice of the consent given and the rights waived by a person who signs the "Consent and Waiver of Notice" portion of the form because the rights surrendered by a person signing that part of the form are fundamental and substantial. The waiver should clearly describe the associated rights that may be waived in addition to notice of a hearing on a petition for appointment of a guardian, rights that might not otherwise be apparent to a person who is asked to sign the form.

Recommendation

The Probate and Mental Health Advisory Committee recommends that the Judicial Council, effective January 1, 2004, revise form GC-211 to:

1. Move the Notice text box at the bottom of the form to a more prominent position, immediately above the place where persons waiving notice of hearing and consenting to the appointment of a guardian must sign their names;
2. Clarify and simplify the text in the Notice text box;
3. Revise the text of item 4 to clarify that waiver of notice of the hearing on a petition for appointment of guardian includes waiver of notice of any request for independent powers contained in that petition and waiver of the right to receive a copy of that petition; and
4. Change the title of the “Consent and Waiver of Notice” portion of the form to provide greater actual notice that the person who signs that part of the form is consenting to the appointment of a guardian.

A copy of revised form GC-211 is attached at page 5.

A copy of existing form GC-211 is attached at page 6.

Rationale for Recommendation

The bottom portion of form GC-211, titled “Consent and Waiver of Notice,” calls for the signatures of persons interested in a guardianship who are consenting to the appointment of a guardian and waiving their right to receive notice of the hearing on the petition for that guardian’s appointment.¹ The proposed revisions are intended to give greater actual notice of the possible consequences of signing the form.

A text box is located at the bottom of the existing form, containing the following language, in bold 9-point type:

Notice: The guardian of the person of a minor has full legal and physical custody. Parents and other interested parties cannot terminate guardianships without a court order. Courts will not order a guardianship terminated unless it is shown to be in the minor’s best interest.

The advisory committee proposes to highlight this notice by moving it from the bottom of the form to a more prominent place just above the “Consent and Waiver of Notice” portion of the form; increasing the font size of the type to 10 points; and increasing the thickness of the text box border from 1 to 2 points.

¹ The persons entitled to notice of the hearing on a petition for appointment of a guardian of a minor include the minor, if over the age of 11; the minor’s parents; any person having legal custody of the minor or serving as guardian of the minor’s estate; any person nominated as the minor’s guardian; the minor’s spouse (estate guardianships); the minor’s relatives within the second degree (siblings and grandparents); and any person caring for the minor other than the person with legal custody. (Prob. Code, §§ 1510(c), 1511.)

The committee also proposes to revise the text inside the box to read:

Notice: The guardian of the person of a minor child has full legal and physical custody until the child becomes an adult or is adopted, the court changes guardians, or the court terminates the guardianship. Parents or other interested persons must petition the court to terminate the guardianship. The court will not do so unless the judge decides that termination would be in the child's best interest.

The revised text should be easier for parents and other interested persons to understand. The only guardianship terminations not mentioned in the revised text are emancipation and the child's death. (Prob. Code, § 1600.) However, these are rare events compared to the forms of termination that are mentioned. Their inclusion would unnecessarily complicate, rather than simplify, the text.

The committee also proposes to change the title of the bottom portion of the form from "Consent and Waiver of Notice" to "Consent to Appointment of Guardian and Waiver of Notice," to make corresponding changes in the name of that part of the form in the title caption box, and to change the title of the form at the bottom of the page to match the titles of all three portions of the form shown in the caption box. If these changes are made, the full name of the form will be *Consent of Proposed Guardian, Nomination of Guardian, and Consent to Appointment of Guardian and Waiver of Notice*.

Other changes in the text of item 4 of the form—the actual consent and waiver given by a person who signs the bottom of the form—would clarify that the person waiving notice of the hearing on a petition for appointment of a guardian also waives (1) the right to timely receive a copy of the petition and (2) notice that a request for independent powers may have been made in that petition.² These changes would address the current form's absence of notice that these additional rights are waived by a person who signs the bottom of the form. This omission was recently noted in the Continuing Education of the Bar treatise on guardianships and conservatorships. The treatise recommended disclosure, by handwritten or typewritten interlineation, of the additional rights waived.³ The proposed change would make that temporary fix unnecessary.

² A copy of the petition for appointment of a guardian must be served with the notice of hearing on persons entitled to notice (Prob. Code, § 1511(a).) See Prob. Code, §§ 2108(a), 2591, and 2592(b), concerning requests for independent powers in guardianships. Section 2592(b) requires the notice of hearing on a petition for appointment of a guardian containing a request for independent powers to advise that the request has been made and to specify the independent powers requested in the petition. "Independent powers" refers to the authority to take specified action without notice, prior court approval, or court confirmation. The powers that may be granted under section 2591 include the powers to contract and bind the guardianship estate, to sell real or personal property of the estate, or to borrow money and give security for repayment from estate assets.

³ See 1 *California Conservatorships and Guardianships* (Cont.Ed.Bar 3d ed. 1990) § 7.39, p. 407.

Alternative Actions Considered

The advisory committee believes that the existing form does not give adequate notice to interested persons concerning the important rights they waive by signing the form. Form GC-211 must be changed to improve the actual notice it imparts. No alternatives to the form's revision were considered.

Comments From Interested Parties

This proposal was circulated to an expanded list of probate practitioners and probate law sections of local bar associations in addition to the AOC's standard mailing list of court executives, judges, and other interested persons and organizations, including the Trusts and Estates Section of the California State Bar.

Six comments were received in response to this proposal. All were favorable.⁴ One commentator, Tressa Kentner, the Chief Executive Officer of the Superior Court, County of San Bernardino, recommended that the Notice text box be changed by enlarging its type and using more direct language to ensure that persons asked to sign the waiver of notice and consent to the appointment of a guardian just below the text box will be more fully and fairly advised of the rights they are waiving.

The advisory committee agrees with this comment. It made the suggested changes.

Implementation Requirements and Costs

The normal costs of making any change in a form will be incurred. However, these costs are necessary if the persons interested in guardianship proceedings are to be given greater actual notice of the substantial rights they are asked to waive by signing the bottom of the form. The Notice text box performs no function other than to give such notice. It should give the greatest actual notice possible.

These changes may result in fewer initial waivers and thus service of more notices of hearings and copies of petitions for appointment of guardians. However, this could result in less contested guardianship litigation. The revised form provides more information to persons who are asked to waive important rights. Such persons are less likely than before to believe that they were misled or treated unfairly at the commencement of the proceeding. This, in turn, may result in fewer attacks on appointed guardians and fewer unfounded petitions for termination of guardianships.

Attachments

⁴ A chart showing the comments and the committee's responses is attached at pages 7–8.

ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, State Bar number, and address</i>): <hr/> <div style="display: flex; justify-content: space-between;"> <div>TELEPHONE NO.:</div> <div>FAX NO. (<i>Optional</i>):</div> </div> <div>E-MAIL ADDRESS (<i>Optional</i>):</div> <div>ATTORNEY FOR (<i>Name</i>):</div>	FOR COURT USE ONLY <div style="font-size: 1.2em; font-weight: bold;">DRAFT NO. 9</div> <div style="font-size: 1.2em; font-weight: bold;">09/24/03</div>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	CASE NUMBER:
GUARDIANSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE OF (<i>Name</i>):	
<input type="checkbox"/> CONSENT OF PROPOSED GUARDIAN <input type="checkbox"/> NOMINATION OF GUARDIAN <input type="checkbox"/> CONSENT TO APPOINTMENT OF GUARDIAN AND WAIVER OF NOTICE	CASE NUMBER:

CONSENT OF PROPOSED GUARDIAN

1. I consent to serve as guardian of the ☐ person ☐ estate of the minor.

Date: _____

(TYPE OR PRINT NAME)

(SIGNATURE OF PROPOSED GUARDIAN)

NOMINATION OF GUARDIAN

2. I am ☐ a parent of the minor ☐ a donor of a gift to the minor. I nominate (*name and address*):

as guardian of the ☐ person ☐ estate of the minor.

3. I am ☐ a parent of the minor ☐ a donor of a gift to the minor. I nominate (*name and address*):

as guardian of the ☐ person ☐ estate of the minor.

Date: _____

(TYPE OR PRINT NAME)

(SIGNATURE)

NOTICE: The guardian of the person of a minor child has full legal and physical custody until the child becomes an adult or is adopted, the court changes guardians, or the court terminates the guardianship. Parents or other interested persons must petition the court to terminate the guardianship. The court will not do so unless the judge decides that termination would be in the child's best interest.

CONSENT TO APPOINTMENT OF GUARDIAN AND WAIVER OF NOTICE

4. I consent to appointment of the guardian as requested in the *Petition for Appointment of Guardian of Minor*, filed on (date): _____. I am entitled to notice in this proceeding, but I waive notice of hearing of the petition, including notice of any request for independent powers contained in it. I waive timely receipt of a copy of the petition.

DATE	(TYPE OR PRINT NAME)	(SIGNATURE)	RELATIONSHIP TO MINOR
DATE	(TYPE OR PRINT NAME)	(SIGNATURE)	RELATIONSHIP TO MINOR
DATE	(TYPE OR PRINT NAME)	(SIGNATURE)	RELATIONSHIP TO MINOR

☐ Continued on Attachment 4.

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Consent of Guardian, Nomination, and Waiver of Notice and Consent to Appointment

	Commentator	Position	Comment on behalf of group?	Comment	Probate and Mental Health Advisory Committee Response
1.	Mr. Brian J. Back Presiding Judge, Juvenile Court Superior Court of California, County of Ventura	A	N	No specific comments were made.	
2.	Ms. Dee Dee Blackwood Court Probate Investigator Guardianship Task Force Chair California Association of Superior Court Investigators (CASCI)	A	N	No specific comments were made.	
3.	Ms. Harlean Carroll Probate Attorney Superior Court of California, County of Los Angeles	A	N	GC-211 (revision)—appears ok.	
4.	Mr. Robert Gerard President Orange County Bar Association	A	Y	No specific comments were made.	
5.	Ms. Tressa Kentner Court Executive Officer Superior Court of California, County of San Bernardino	AM	Y	Our court's probate attorneys are concerned that parents still will not understand the rights they are giving up. They suggest bolding the font of notice even more and using more direct language. That clearly tells parents they are giving up parental rights that may be difficult to regain.	The advisory committee partially agrees with this comment. The committee has enlarged the notice box and the text within it, and simplified the language as suggested. The committee has also changed the title of the form and the heading of the form's waiver of notice section to emphasize that the waiver is also consent to the

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Consent of Guardian, Nomination, and Waiver of Notice and Consent to Appointment

	Commentator	Position	Comment on behalf of group?	Comment	Probate and Mental Health Advisory Committee Response
					appointment of a guardian. However, no reference to the difficulty of regaining rights waived has been made because the degree of difficulty may vary greatly from case to case, depending on an almost unlimited variety of facts and circumstances.
6.	Ms. Emily Stuhlbarg Professional Conservator / President Emily Stuhlbarg and Associates, Inc. County of Los Angeles	A	N	No specific comments were made.	